

ATTACHMENT NO. 10

RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT

[BEHIND THIS PAGE]

RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE

Owner: _____

Property Address: _____
Milpitas, California _____

Name of Development: KB Home

This RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT ("Agreement") is entered into by and between the Redevelopment Agency of the City of Milpitas ("the Agency") and _____ ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as _____, Milpitas, CA _____ (the "Property") effective as of _____, 20__ ("Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Agency pursuant to the Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of very low, low, and moderate income ("the Program").

B. Pursuant to the Program, the Agency and KB Homes Southbay, Inc. ("Developer") entered into a Memorandum of Understanding, dated _____, 2003 and an Owner Participation Agreement, dated _____, 2003 (collectively "the Agreements") under which Developer has agreed to construct and sell 110 homes at prices that are affordable to persons of moderate incomes and in exchange the Agency has agreed to provide certain financial incentives.

C. Owner is the owner of certain real property located within the City of Milpitas, legally described in Exhibit A and commonly known as _____, Milpitas, CA ____ ("the Property"). The Property is one of the affordable homes constructed by Developer pursuant to the Agreements.

D. Owner is an eligible moderate-income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence.

E. In order to maintain and preserve the Property as housing affordable to eligible moderate-income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible moderate-income purchasers. To further serve the purposes of the Program, it is necessary that the Agency be granted an option to purchase the property so that the property may be resold by the Agency to an eligible household.

F. Accordingly, the Parties desire to enter into this Resale Restriction and Option to Purchase Agreement, which provides, generally, that Owner may only sell the property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively, the Agreement provides that the City may exercise its option to purchase the Property at the same price.

G. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Agency hereby agree as follows:

1. Definitions.

(a) "Affordable Unit Cost" shall mean a sales price that results in annual housing costs, including principal payments, interest, property taxes, homeowners' insurance, homeowners' association dues, and mortgage insurance, that do not exceed 30% of income level for the Eligible Household.

(b) "Area Moderate Income for Santa Clara County" means those income and eligibility levels determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

(c) "Persons and families of moderate income" means persons and families whose income do not exceed one hundred twenty percent (120%) of the Area Median Income for Santa Clara County, as adjusted for household size.

(d) Persons and families meeting the definition set forth in Paragraph 1(b) above shall be referred to as "Eligible Households."

2. Program Requirements.

(a) Affordability Restrictions. Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Paragraph 5, (ii) the Agency pursuant to Paragraph 3, or (iii) a permitted transferee pursuant to Paragraph 9.

(b) Disclosure. DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AGENCY THAT THE TRANSFEREE QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE, WHICH IS CAPPED AT THE AFFORDABLE UNIT COST AS DEFINED IN PARAGRAPH 1.a. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

(c) Principal Residence Requirement. OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION

THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Paragraph. Upon request by the Agency made from time to time, the Owner of the Property shall submit an affidavit to the Agency certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Paragraph 3.c below) and shall entitle the Agency to exercise its Option to purchase the Property.

3. **Option to Purchase.**

(a) **Grant of Option to Purchase.** Owner hereby grants to the Agency an option ("Option") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Paragraph 3.c below), subject to the terms and conditions contained herein.

(b) **Assignment of the Option.** The Agency may assign the Option to another government entity, a non-profit affordable housing provider or a person or family that qualifies as an Eligible Household. The Agency's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

(c) **Events Giving Rise to Right to Exercise Option.** The Agency shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

(i) Receipt of a Notice of Intent to Transfer (defined in Paragraph 3.d.i below);

(ii) Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Paragraph 10 below;

(iii) Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Paragraph 9 below;

(iv) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(v) Commencement of a judicial foreclosure proceeding regarding the Property;

(vi) Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

(vii) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

(viii) Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Paragraph 2 above.

(d) Method of Exercising the Option.

(i) Notice of Intent to Transfer. If Owner desires to sell, convey, transfer (other than pursuant to Paragraph 9), lease, encumber (other than pursuant to Paragraph 10) or otherwise dispose of the Property or of any estate or interest therein, no less than 60 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Agency in writing to that effect (the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the Agency, together with the Notice of Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Agency, in a form approved by the Agency, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Agency may require documentation evidencing and supporting the income and other financial information contained in the certifications.

(ii) Notice of Exercise. Upon the occurrence of any Option Event, the Agency may exercise its Option by delivering notice, pursuant to Paragraph 16 and within the time period specified in Paragraph 3(d)(iv), to Owner of Agency's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C, or in such other form as the Agency may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Paragraphs 3.c.iv, 3.c.v, or 3.c.vi, then the Agency shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Santa Clara County.

(iii) Notice of Consent to Transfer. If the Agency does not exercise the Option, it may give its consent to the occurrence of the Option Event ("Consent to Transfer"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the Agency's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the Agency; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or execution of an agreement substantially similar to this Agreement, within sixty (60) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (i) fails to qualify as an Eligible

Household, (ii) fails to execute and deliver the Disclosure Statement to the Agency, or (iii) fails to execute and deliver to the Agency an assumption agreement or an agreement substantially similar to this Agreement within such sixty (60) day period, then the Consent to Transfer shall expire and the Agency may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

(iv) **Time Period for Notice.** The Agency shall deliver a Consent to Transfer, if applicable, not later than sixty (60) days after the date that it receives notification of an Option Event. The Agency shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) sixty (60) days after the date that the Agency receives notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Agency shall be deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Paragraph 16 below or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred. The Agency shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subparagraph. If there is a stay or injunction imposed by court order precluding the Agency from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Agency has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

(v) **Notice of Abandonment.** If the Agency fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in paragraph 3.d.iv, upon request by Owner, the Agency shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. Unless Owner requests recordation of notice of abandonment within 30 days of the Agency's failure to deliver Notice of Exercise or Consent to Transfer, the Agency shall have no obligation to record the notice of abandonment. Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Agency fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

(vi) **Right to Reinstatement.** If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Agency shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Agency pursuant to this

Paragraph shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Paragraph 5 below.

(vii) Inspection of Property. After receiving a Notice of Intent to transfer or delivering a Notice of Exercise, the Agency shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Agency shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Agency's request for inspection.

(viii) Escrow. Promptly after delivering a Notice of Exercise, the Agency shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the Agency shall deposit into escrow with a title company of Agency's choosing, an amount equal to the Adjusted Resale Price as defined in Paragraph 5 below and all escrow fees and closing costs to be paid by Agency. Commissions (not to exceed 6% of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Agency.

(ix) Proceeds of Escrow; Removal of Exceptions to Title. Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Agency as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Agency ("Permitted Exceptions").

The purchase price deposited into escrow by the Agency shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Paragraph 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Agency agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Agency harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Agency that relate to such exceptions and their removal as exceptions to title to the Property.

4. **Base Resale Price.** Prior to adjustment pursuant to Paragraph 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

(a) **Median Income.** The original price ("Base Price") paid by Owner for acquisition of the Property pursuant to the Program, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the median household income ("Median Income") for Santa Clara County published by the California Department of Housing and Community Development, Division of Housing Policy Development, between the Effective Date and the date that the Agency receives notification of an Option Event; or

(b) **Index Price.** The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") between the Recording Date and the date that the City receives notification of an Option Event; or

(c) **Fair Market Value.** The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Agency.

To compute the Base Resale Price, the Agency may use the Base Resale Price Worksheet attached as Exhibit D hereto, or such other form as the Agency may from time to time adopt.

5. **Adjustments to Base Resale Price.** Subject to the Affordable Unit Cost restriction described in subparagraph (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment"):

(a) **Capital Improvements.** An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Agency after Owner has submitted original written documentation of the cost to the Agency for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements.

(b) **Damages.** A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Agency upon Agency's exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner's expense, maintain the Property in the same condition as in existence on the date of Agency's Notice of Exercise, reasonable wear and tear excepted.

(c) **Advances by the Agency.** A decrease in an amount equal to the sum of all costs advanced by the Agency for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

(d) Adjusted Resale Price Not to Exceed Affordable Unit Cost. The Base Resale Price as adjusted, is hereinafter referred to as the "Adjusted Resale Price." Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. Priority and Effectiveness of the Option.

(a) Recordation. This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Agency, the Agency shall take the Property subject only to Permitted Exceptions. Except as otherwise provided in Paragraph 7.a, the exercise of the Option by the Agency at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

(b) Request for Notice of Default. The Agency shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement (see Exhibit E).

7. Survival of Option Upon Transfer.

(a) In General. The Agency's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, provided that the Agency has received timely notice of such Option Event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Agency, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

(b) HUD Insured Mortgage. If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. Voidable Transfers. As long as the Option has not been abandoned pursuant to Paragraph 3.d.v, any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Agency.

9. Permitted Transfers. Provided that the transferee assumes, within 30 days of a written request by the Agency, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or at Agency's election, execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be subject to the Agency's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household. Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. Rights of First Lender. Notwithstanding any other provision of this Agreement, this Agreement shall not diminish the right of the holder of a note evidencing any first priority loan on the Property ("First Lender") made for the purpose of securing financing to purchase the Property, to refinance indebtedness incurred to purchase the Property, or to make necessary repairs to the Property, (subject to the "Permitted Encumbrance Amount" specified above (collectively, "First Loan")). The provisions of this Agreement shall be subordinate to the lien of the First Lender's Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor-in-interest to exercise its remedies under the First Lender's Deed of Trust in the event of a default under the First Lender's Loan or Deed of Trust. Such remedies under the First Lender's Deed of Trust include the right of foreclosure under a First Lender's Loan or a First Lender's acceptance of a deed-in-lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter, provided that (i) Agency shall have been given written notice of the default under such Lender's First Deed of Trust, and (ii) the Agency shall not have cured the default under such Lender's First Deed of Trust within a thirty (30) day period or such longer period as may be provided in such notice, or commenced to cure the default within such thirty (30) day or longer period and given its firm commitment to complete the cure in form and substance acceptable to the First Lender. As used herein, the "Permitted Encumbrance Amount" shall not exceed an amount equal to ninety percent (90%) of the Base Resale Price calculated as provided in Paragraph 4. The Permitted Encumbrance Amount shall be calculated as if the Agency had received notification of an Option Event on the earlier of (a) the date on which First Lender's Deed of Trust is filed for record in the Office of the Recorder of the County of Santa Clara, or (b) the date the Agency receives a Notice of Intent to Transfer pursuant to paragraph 3.d.i above. Owner hereby covenants and agrees that he/she/they shall use his/her/their best efforts to ensure that any deed of trust or other agreement encumbering the Property shall include provisions providing for notice to be delivered to the Agency of any default thereunder and for Agency's right to cure such default at Agency's election.

11. **Obligation of Owner After Option Abandonment.** If the Agency records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Agency an amount ("Agency's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Agency's Share shall be paid to the Agency concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.

12. **Limits on Liability.** In no event shall the Agency become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Agency be in any way liable or obligated to Owner for any failure of the Agency's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. **Insurance Proceeds and Condemnation Award.** In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Paragraph 3.d.ix had the Agency exercised its Option on the date of the destruction or condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Agency.

14. **Effective Date:** The rights and obligations of the Agency and Owner set forth in this Agreement shall be effective as of the Effective Date.

15. **Term of Agreement and Option.** The restrictions contained herein and the Agency's option to purchase the Property shall continue for a period of forty-five (45) years commencing on the Effective Date.

16. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Owner: At the address of the Property

17. Remedies Upon Breach.

(a) **Specific Performance.** Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the Agency. Owner agrees that the Agency is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the Agency for Owner's failure to perform according to the terms of this Agreement.

(b) **Other Remedies.** Agency shall have all of the remedies provided for at law or equity.

18. General Provisions.

(a) **Attorneys' Fees.** If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in addition to any other recovery to which it is entitled under this Agreement.

(b) **No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

(c) **Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

(d) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

(e) **Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

(f) **Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

(g) **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

(h) **Waiver; Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

(i) **Construction.** The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

(j) **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.


(k) **Time of the Essence.** Time is of the essence in this Agreement as to each provision in which time is an element of performance.

(l) **Further Assurances.** Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

(m) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date first written above.

	<p>OWNER(S):</p> <hr/> <hr/> <hr/>
	<p>AGENCY:</p> <p>MILPITAS REDEVELOPMENT AGENCY</p> <hr/> <p>Executive Director</p>



STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for
said county and state, personally appeared _____
_____ personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____

(Seal)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction and Option to Purchase Agreement dated _____ from _____ to the Milpitas Redevelopment Agency is hereby accepted by the undersigned office or agent on behalf of the Milpitas Redevelopment Agency pursuant to authority conferred by the Resolution No. _____ dated _____; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____ By: _____
Its: _____



Legal Description
[To be inserted]

[To be inserted]

EXHIBIT B
FORM: NOTICE OF INTENT TO TRANSFER
VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

To: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035

Attn: Agency Executive Director

Date: _____

Re: Notice of Intent to Transfer

Pursuant to the terms of the Resale Restriction and Option to Purchase Agreement, dated _____, the undersigned Owner(s), _____, hereby give(s) notice of his/her/their intent to transfer the property located at _____, Milpitas, California (the "Property"). Owner may be contacted at the Property or at the following address:

Owner's daytime telephone number is () _____

[If applicable: The proposed transfer of the Property is to the following person(s):

Name: _____

Address: _____

Telephone: () _____]

The proposed transfer is (check one):

☐ Sale

☐ Other

Owner(s) signature(s):

EXHIBIT C

FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The Milpitas Redevelopment Agency ("Agency") hereby gives notice that it is exercising its option to purchase the real property located at _____ Milpitas, California. The option has been granted to the Agency pursuant to the Resale Restriction and Option to Purchase Agreement between Owner and the Agency dated _____ and recorded on _____ as Instrument No. _____. [The Agency has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the First American Title Company.

REDEVELOPMENT AGENCY

By: _____

Its: _____



EXHIBIT D

BASE RESALE PRICE WORKSHEET

Date:	_____
Owner:	_____
Address:	_____
Purchase Price:	_____
Date of Purchase:	_____
Years Owned:	_____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***			
Present Median Income: \$ _____ Family of four, County of Santa Clara (at time of sale of unit)	Effective Date: _____		
Original Median Income: \$ _____ Family of four, County of Santa Clara (at time of purchase of unit)	Effective Date: _____		
Amount of Increase: _____ Family of four, County of Santa Clara (Present median income minus original median income)			
Increase in Price: _____	x _____	x _____	= _____
Method #1 Resale Price: _____	+		= _____
METHOD #2: CALCULATION BASED ON INCREASE IN MEDIAN INCOME			
Present CPI: _____	Effective Date: _____		
Original CPI: _____	Effective Date: _____		
Rate of Increase: _____ per annum			
Increase in Price: _____	x _____	x _____	= _____
Method #2 Resale Price: _____	+		= _____
Based on the above, the base resale price as of this date, _____, is:			

By: _____

EXHIBIT E
REQUEST FOR NOTICE OF DEFAULT

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Agency Executive Director

(Space Above This Line For Recorder's Use Only)

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, in the Official Records of Santa Clara County, California, and describing land therein as:

executed by _____, as Trustor, in which _____ is named as Beneficiary, and _____, as Trustee, be mailed to the Milpitas Redevelopment Agency, 455 Calaveras Boulevard, Milpitas, California _____, Attn: _____.

By: _____

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____

_____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (This area for official notarial seal)

EXHIBIT F
DISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____
ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL BE VOIDABLE AT THE ELECTION OF THE CITY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT THE MILPITAS REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

BUYER

BUYER

ATTACHMENT NO. 11

PRELIMINARY DISTRIBUTION PLAN

[BEHIND THIS PAGE]

ELMWOOD / TERRA SERENA
DISBURSEMENT PLAN UNITS
01-Dec-04

THIS IS PRELIMINARY AND SUBJECT TO CHANGE

PODIUM

Building 1 107, 108, 202, 203, 204, 205, 207, 208, 210, 211, 212, 213, 214, 302, 303, 304, 305, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328
Building 2 117, 118, 202, 203, 204, 205, 206, 212, 213, 214, 215, 217, 218, 302, 303, 304, 305, 306, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 404
Building 3 117, 118, 202, 203, 204, 205, 206, 212, 213, 214, 215, 217, 218, 302, 303, 304, 305, 306, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 404

TOTAL 85

SINGLE FAMILY

Lot numbers from Tentative Map TM-5
13, 18, 20, 38, 44, 79, 139, 157, 161, 166

TOTAL 10

TOWNHOME

Building numbers from Tentative Map TM-5
F1 units in the following buildings
C1, C1, C2, C2, C3, C4, C6, C6, C8, C11, C12, C13, C13, C17, C18

TOTAL 15

ATTACHMENT NO. 12

FORM OF SILENT SECOND PROMISSORY NOTE

[BEHIND THIS PAGE]

SECURED BY DEED OF TRUST

transfer resulting from a decree of dissolution of marriage, legal separation agreement, or incidental property settlement agreement by which the spouse of a Borrower becomes a sole owner of the Property; and (g) a transfer into an inter vivos trust in which a Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Property.

1. INTEREST. Beginning on the recordation of the Deed of Trust and continuing until the Note is repaid in full, except as otherwise provided herein, the Principal Sum shall bear interest at the rate paid on the Lender's deposits to the Local Agency Investment Account on the date of this Promissory Note is executed plus one percent (1%) per annum. Beginning on the thirty-seventh month following recordation of the Deed of Trust and continuing until the Note is repaid in full, the Principal Sum shall not bear interest.

2. INTEREST FORGIVEN. Upon the fourth anniversary of the recordation of the Deed of Trust, the Lender shall forgive twenty percent (20%) of the interest accrued pursuant to Section 2. Upon each anniversary of the recordation of the Deed of Trust thereafter, Lender shall forgive an amount equal the amount of interest forgiven pursuant to the preceding sentence.

3. DUE ON SALE. This Promissory Note shall be due and payable in full upon the occurrence of any Sale.

4. DUE ON RENTING OR LEASING. This Promissory Note shall also be due and payable in full upon Renting or Leasing.

5. AMOUNT AND TIME OF PAYMENT. The Principal Sum and all accrued interest, if any, shall be due and payable on the date that is forty-five (45) years from the recordation of the Deed of Trust.

6. PREPAYMENT. Borrowers shall have the right at any time to prepay the Principal Amount of this Promissory Note. The Principal Amount of this Promissory Note shall be deemed paid in full when prepayments equal the Principal Sum, plus simple interest on the Principal sum from the date of this note to the date of payment at the rate set forth in Section 2.

7. SECURITY. This Promissory Note is secured by a Subordinate Deed of Trust of even date herewith.

8. DEFAULT UNDER DEED OF TRUST. If default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Promissory Note, this Promissory Note shall immediately become due and payable in full at the option of Lender. Failure by Lender to exercise its option to accelerate in the event of a default shall not constitute waiver of the right to exercise such option in the event of the same or any other default. In the event Lender exercises such an option, the amount due and payable shall be as provided in Section 4 of this Note.

9. REMEDIES. Lender shall have available any such remedy provided by law or equity including foreclosure.

10. COSTS AND ATTORNEYS' FEES. If suit is brought to collect this Promissory Note, Lender shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to reasonable attorneys' fees.

11. SEVERABILITY. The covenants of this Promissory Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect the validity of any other covenant.

BORROWERS

Name

Name

Acknowledgement

Lender

ATTACHMENT NO. 13

FORM OF SILENT SECOND DEED OF TRUST

[BEHIND THIS PAGE]

RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383

When Recorded Mail to:

Milpitas Redevelopment Agency
355 Calaveras Blvd
Milpitas, CA 95035
Attn: Executive Director

SUBORDINATE DEED OF TRUST

THIS DEED OF TRUST is made this _____ Day of _____ 2002, among the Trustor, _____ (herein "Borrower"), the City of Milpitas (herein "Trustee"), and the Beneficiary, Milpitas Redevelopment Agency, a public body, corporate and politic, organized and existing under the laws of the State of California, whose address is 355 Calaveras Boulevard, Milpitas, California 9503594804 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, the following described property located in the County of Santa Clara, State of California:

[legal description]

which has the address of _____, Milpitas, CA 95035
(herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to Lender the repayment of the indebtedness evidenced by a promissory note dated _____ and extensions and renewals thereof (herein "Note"), in the principal sum _____ (\$ _____), with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Application and Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender first in payment of interest payable on the Note, and then to the principal of the Note.

3. Prior Mortgages and Deeds of Trust; Charges, Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed or trust, or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards, included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance offers to settle a claim for insurance benefits, Lender is authorized to collect and apply insurance proceeds at Lender's option either to restoration and repair of the Property or to sums secured by this Deed of Trust.

5. Preservation and Maintenance of Property. Borrower shall keep the property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Deed of Trust is on a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice

to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest, including reinstating any default under the senior loan by payment of the amount in default, excluding accelerated principal, but including reasonable costs and expenses and trustees' and attorneys' fees. If Lender required mortgage insurance is a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, Deed of Trust or other security agreement with a lien which priority over this Deed of Trust.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successor's in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions and paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or note, without the Borrower's and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to borrower or Lender when given in the manner designated herein.

12. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

14. Mortgage Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims, or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

15. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust, or if Lender has executed a separate written waiver of this option.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

16. Acceleration; Remedies. Except as provided in paragraph 15 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to

acceleration shall give notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date of notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 16, including but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender election to cause the Property to be sold and shall cause such notice to be recorded in each county which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall have public notice of sale to the persons and in the manner prescribed by applicable law. After lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made herein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

17. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided herein, including but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Lender, in person, by agent, or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. Subordination. Lender and Borrower acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants, and conditions of the first deed of trust and to all advances heretofore made or which may hereafter be made pursuant to the first deed of trust including all sums advanced for the purpose of protecting or further securing the lien of the first deed of trust, or curing defaults by the Borrower under the first deed of trust.

Except as specifically set forth in this paragraph 19, Borrower may not subordinate this Deed of Trust to any other security instrument, promissory note, lien or other such similar document without first obtaining prior written approval of Lender. Additionally, Borrower agrees that the property subject to this Deed of Trust shall not be refinanced in order that Borrower may withdraw cash from the equity in the Property, unless such a refinance is for hardship reasons which shall be reviewed and approved in the sole and absolute discretion of the Lender.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay costs of recordation, if any.

21. Substitute Trustee. Lender, at Lender's option, may from time to time appoint a successor trustee to any trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

22. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of

Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the Civil Code of California.

23. Statement of Obligation. Lender may collect a fee not to exceed \$50 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

24. Residency. Borrower agrees that the Property subject to this Deed of Trust shall be owner-occupied by Borrower, and failure to do so occupy constitutes a default under the Deed of Trust and the Note.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

BORROWER

Name

Name

ATTACHMENT NO. 14

SPECIAL CONDITIONS

[BEHIND THIS PAGE]

ATTACHMENT NO. 14

Special Conditions

1. Timing for the connection to Abbott Avenue. The City is requiring that Abbott Parkway be connected to the North South Road from Great Mall Parkway by the Developer. The Developer is concerned that Developer will be required to purchase the right-of-way. Agency agrees that either Agency or the City will deliver the right-of-way connection to Developer within five years and six months after approval of the Entitlements, and such right of way for the connection to Abbott Parkway will not be taken from the County's commercial property or Developer's residential property. If the City or Agency fail to deliver the right-of-way within such time, the Developer will no longer be required to connect Abbott Parkway to the North South Road from Great Mall Parkway.

2. CFD No. 2005-1. Developer shall submit executed petitions to annex into and establish Community Facilities District CFD No. 2005-1 for Park Maintenance and Street Landscape Maintenance. The report for CFD No. 2005-1 that sets Rates and Method of Apportionment is attached to this Attachment No. 14 as Exhibit "A". No final map, development entitlement or grading permit will be issued without receipt of an executed petition for annexation and consent waiver executed by the Developer for the establishment of of the special taxes. The Developer shall comply with all rules, regulations, policies and practices established by State law and/or by the City of Milpitas with respect to the Community Facilities District, including, without limitation, requirements for notice and disclosure to future owners and/or residents.

3. Bonding requirements for required Infrastructure and Mitigations. [To be addressed].

Exhibit "A" to Attachment No. 14

REPORT FOR CFD NO. 2005-1

[TO BE ATTACHED]

Exhibit "A"

RATE AND METHOD OF APPORTIONMENT FOR
CITY OF MILPITAS
COMMUNITY FACILITIES DISTRICT NO. 2005-1
(PUBLIC SERVICES)

A Special Tax as hereinafter defined shall be levied on all Assessor's Parcels in City of Milpitas Community Facilities District No. 2005-1 (Public Services) ("CFD No. 2005-1") and collected each Fiscal Year commencing in Fiscal Year 2005-06, in an amount determined by the Council through the application of the appropriate Special Tax for "Developed Property," as described below. All of the real property in CFD No. 2005-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2005-1: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2005-1 or any designee thereof of complying with City, CFD No. 2005-1 or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2005-1 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2005-1 for any other administrative purposes of CFD No. 2005-1, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

"Certificate of Occupancy" means a certificate issued by the City allowing the inhabitation of a Dwelling Unit by one or more residents.

"**CFD Administrator**" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"**CFD No. 2005-1**" means City of Milpitas Community Facilities District No. 2005-1 (Public Services).

"**City**" means the City of Milpitas.

"**Consumer Price Index**" means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area, measured as of the month of December in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco-Oakland-San Jose Area.

"**Council**" means the City Council of the City, acting as the legislative body of CFD No. 2005-1.

"**County**" means the County of Santa Clara.

"**Developed Property**" means, for each Fiscal Year, all Assessor's Parcels of Residential Property for which a Certificate of Occupancy has been issued on or after April 1 of the prior Fiscal Year, but not earlier than April 1, 2005.

"**Dwelling Unit**" means a building or portion thereof designed for and occupied in whole or part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

"**Fiscal Year**" means the period starting July 1 and ending on the following June 30.

"**Maximum Special Tax**" means, for each Fiscal Year, the maximum Special Tax, determined in accordance with Section C, below, that can be levied on any Assessor's Parcel.

"**Multi-family Property**" means Residential Property on which two or more attached Dwelling Units are located.

"**Non-Residential Property**" means, for each Fiscal Year, all Assessor's Parcels for which a Certificate of Occupancy was issued on or after April 1, 2005 for a non-residential use.

"**Property Owner Association Property**" means, for each Fiscal Year, any Assessor's Parcel within the boundaries of CFD No. 2005-1 that is owned by or irrevocably offered for dedication to a property owner association, including any master or sub-association.

"Proportionately" means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Developed Property.

"Public Property" means, for each Fiscal Year, (i) any property within the boundaries of CFD No. 2005-1 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided however that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (ii) any property within the boundaries of CFD No. 2005-1 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

"Residential Property" means, for each Fiscal Year, all Assessor's Parcels for which a Certificate of Occupancy was issued on or after April 1, 2005 for purposes of constructing one or more residential Dwelling Units.

"Second Unit Property" means Residential Property containing an attached or detached Dwelling Unit on a permanent foundation, which provides independent living facilities for one or more persons in addition to a principal one-family dwelling.

"Services" means maintenance of parks, parkways and open space, including landscaping. CFD No. 2005-1 shall finance Services only to the extent that they are in addition to those provided in the territory of CFD No. 2005-1 before the CFD was created and such Services may not supplant services already available within CFD No. 2005-1 when the CFD was created.

"Special Tax" means the special tax to be levied in each Fiscal Year on each Assessor's Parcel of Developed Property to fund the Special Tax Requirement.

"Special Tax Requirement" means that amount to be collected in any Fiscal Year for CFD No. 2005-1 to pay for certain costs as required to meet the needs of the CFD in that Fiscal Year. The costs to be covered shall be the direct costs for (i) Services, and (ii) Administrative Expenses; less (iii) a credit for funds available to reduce the annual Special Tax levy, if any, as determined by the CFD Administrator. Under no circumstances shall the Special Tax Requirement include debt service payments for debt financings by CFD No. 2005-1.

"State" means the State of California.

"Undeveloped Property" means, for each Fiscal Year, all property not classified as Developed Property, Non-Residential Property, Property Owner Association Property, or Public Property.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, all Assessor's Parcels, as applicable within CFD No. 2005-1, shall be classified as Developed Property, Non-Residential Property, Undeveloped Property, Property

Owner Association Property, or Public Property. However, only Developed Property shall be subject to annual Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. All Developed Property shall be assigned to Land Use Class 1.

C. MAXIMUM SPECIAL TAX RATE

1. Developed Property

a. Maximum Special Tax

The Maximum Special Tax for Fiscal Year 2005-06 for Developed Property is shown below in Table 1. Such Special Taxes shall only be levied for new structures on Residential Property, including Second Unit Property and Multifamily Property. However, under no circumstances shall a Special Tax be levied for renovations to an existing Dwelling Unit.

TABLE 1

Maximum Special Taxes for Developed Property
For Fiscal Year 2005-06
Community Facilities District No. 2005-1

Land Use Type	Maximum Special Tax Per Dwelling Unit
Residential Property	\$316.30 per Dwelling Unit

b. Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2006, the Maximum Special Tax set forth above shall be increased annually by the greater of the change in the San Francisco-Oakland-San Jose Area Urban Consumer Price Index during the twelve months prior to December of the previous Fiscal Year, or two percent (2%).

2. Undeveloped Property

No Special Taxes shall be levied on Undeveloped Property.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2005-06 and for each following Fiscal Year, the Council shall levy the annual Special Tax Proportionately for each Assessor's Parcel of Developed Property at up to 100% of the applicable Maximum Special Tax, until the amount of Special Taxes equals the Special Tax Requirement.

E. EXEMPTIONS

In addition to Undeveloped Property being exempt from annual Special Taxes, no Special Tax shall be levied on Non-Residential Property, Public Property or Property Owner Association Property. However, should an Assessor's Parcel no longer be classified as Non-Residential Property, Public Property or Property Owner Association Property, such Assessor's Parcel shall, upon each reclassification, no longer be exempt from Special Taxes.

F. APPEALS AND INTERPRETATIONS

Any landowner or resident may file a written appeal of the Special Tax on his/her property with the CFD Administrator, provided that the appellant is current in his/her payments of Special Taxes. During the pendency of an appeal, all Special Taxes previously levied must be paid on or before the payment date established when the levy was made. The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination. If the CFD Administrator agrees with the appellant, the CFD Administrator shall eliminate or reduce the Special Tax on the appellant's property and/or provide a refund to the appellant. If the CFD Administrator disagrees with the appellant and the appellant is dissatisfied with the determination, the appellant then has 30 days in which to appeal to the Council by filing a written notice of appeal with the City Clerk, provided that the appellant is current in his/her payments of Special Taxes. The second appeal must specify the reasons for the appellant's disagreement with the CFD Administrator's determination. The CFD Administrator may charge the appellant a reasonable fee for processing the appeal.

Interpretations may be made by the Council by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

G. MANNER OF COLLECTION

The annual Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 2005-1 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations.

H. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity as necessary to meet the Special Tax Requirement.

ATTACHMENT NO. 14

SPECIAL CONDITIONS

ATTACHMENT NO. 14

Special Conditions

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3. Bonding requirements for required Infrastructure and Mitigations. [To be addressed].

Exhibit "A" to Attachment No. 14

REPORT FOR CFD NO. 2005-1

[TO BE ATTACHED]